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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

ANGEL FRALEY; PAUL WANG; SUSAN  
 MAINZER; JAMES H. DUVAL, a minor, by  
 and through JAMES DUVAL, as Guardian ad  
 Litem; and WILLIAM TAIT, a minor, by and  
 through RUSSELL TAIT, as guardian ad  
 Litem; individually and on behalf of all others  
 similarly situated,

Plaintiffs,

v.

FACEBOOK, INC, a corporation; and DOES  
 1-100,

Defendants.

Case No. 11-CV-01726 LHK (PSG)

**SUPPLEMENTAL DECLARATION OF ANA  
 YANG MULLER IN SUPPORT OF  
 FACEBOOK, INC.'S MOTION TO DISMISS  
 SECOND AMENDED CLASS ACTION  
 COMPLAINT**

Date: September 29, 2011  
 Time: 1:30 p.m.  
 Courtroom: 4  
 Judge: Hon. Lucy H. Koh  
 Trial date: None Set

I, Ana Yang Muller, hereby declare as follows:

1. I am a Legal Project Manager at Facebook, Inc. ("Facebook"). Except as  
 otherwise noted, I have personal knowledge of the following facts and if called to testify could  
 and would testify competently thereto.

2. Facebook's Statement of Rights and Responsibilities (previously referred to as Facebook's "Terms of Use," "Terms of Service," or "Terms") sets forth certain rights and obligations of both Facebook and users of the Facebook website. The current Statement of Rights and Responsibilities is posted on the Facebook website, and can be found by clicking on a link titled "Terms" at the bottom of the Facebook webpage.

3. Using the UserIDs/usernames supplied by Plaintiffs' Counsel, I identified the Terms of Use in effect as of the date on which each named Plaintiff registered for Facebook.

4. Attached as **Exhibit A2** is a true and correct copy of the Facebook "Terms of Use" that was in effect as of the dates on which Plaintiffs Angel Fraley and Susan Mainzer registered for Facebook accounts. It is dated May 24, 2007, and contains the following provision (among others):

By posting User Content to any part of the Site, you automatically grant, and you represent and warrant that you have the right to grant, to the Company an irrevocable, perpetual, non-exclusive, transferable, fully paid, worldwide license (with the right to sublicense) to use, copy, publicly perform, publicly display, reformat, translate, excerpt (in whole or in part) and distribute such User Content for any purpose on or in connection with the Site or the promotion thereof, to prepare derivative works of, or incorporate into other works, such User Content, and to grant and authorize sublicenses of the foregoing.

5. Attached as **Exhibit B2** is a true and correct copy of the Facebook "Terms of Use" that was in effect as of the dates on which Plaintiffs Paul Wang and James H. Duval registered for Facebook accounts. It is dated September 23, 2008, and contains the following provision (among others):

By posting User Content to any part of the Site, you automatically grant, and you represent and warrant that you have the right to grant, to the Company an irrevocable, perpetual, non-exclusive, transferable, fully paid, worldwide license (with the right to sublicense) to use, copy, publicly perform, publicly display, reformat, translate, excerpt (in whole or in part) and distribute such User Content for any purpose, commercial, advertising, or otherwise, on or in connection with the Site or the promotion thereof, to prepare derivative works of, or incorporate into other works, such User Content, and to grant and authorize sublicenses of the foregoing.

6. Attached as **Exhibit C2** is a true and correct copy of the Facebook "Statement of Rights and Responsibilities" that was in effect as of the date on which Plaintiff William Tait

1 registered for a Facebook account. It is dated April 22, 2010, and contains the following  
 2 provision (among others):

3           You can use your privacy settings to limit how your name and profile  
 4 picture may be associated with commercial or sponsored content served by us.  
 5 You give us permission to use your name and profile picture in connection with  
 6 that content, subject to the limits you place.

7           7. I have reviewed all the versions of the entries from Facebook's Help Center  
 8 attached as Exhibits B-F to my July 1, 2011 Declaration that were in effect from just before the  
 9 launch of Sponsored Stories through July 1, 2011.

10           8. Exhibit B to my July 1, 2011 Declaration included the then-current version of the  
 11 Facebook Help Center entry entitled, "Where can I view and edit my privacy settings for  
 12 sponsored content?".

13           As of December 1, 2010, that entry stated:

14           Where can I view and edit my privacy settings for ads?

15           You can edit your ad privacy settings through the "Account Settings" link at the  
 16 top of any page within Facebook, or by clicking here.

17           As of January 28, 2011 at 10:09 a.m., that entry stated:

18           Where can I view and edit my privacy settings for sponsored content?

19           You can edit your ad privacy settings for Facebook Ads through the "Account  
 20 Settings" link at the top of any page within Facebook, or by clicking here.

21           Sponsored Stories are only delivered to your confirmed friends and respect the  
 22 privacy settings you configure for News Feed. Click here to learn more about  
 23 privacy settings for posts you share that may be published to News Feed.

24           The January 28, 2011 (10:13 a.m.) version of the entry is the same as the version  
 25 attached as Exhibit B to my July 1, 2011 Declaration.

26           9. Exhibit C to my July 1, 2011 Declaration included the then-current version of the  
 27 Facebook Help Center entry entitled, "How can I control what my friends see in their News  
 28 Feeds?". That version of the entry has remained the same since at least October 14, 2010.

          10. Exhibit D to my July 1, 2011 Declaration included the then-current version of the  
 Facebook Help Center entry entitled, "How can I control who can see things I post (for example:  
 status updates, links, videos)?".

As of October 14, 2010, that entry stated:

How can I control who can see my status and posts?

You always have the option to adjust the privacy for individual posts before you share them. For example, if you want to share a status update to remind your friends to RSVP to Susan's surprise party, you can exclude Susan from seeing that post. To change the privacy for an individual post, select a setting or "Customize" from the drop-down menu before clicking "Share" to publish the post.

You can control the default setting for posts you share from the Privacy Settings page. Select one of the four global privacy groupings (Everyone, Recommended, Friends of friends or Friends Only) in the "Sharing on Facebook" section. If you'd like to further customize these settings, click "Customize settings" and change the setting for "Posts by Me."

As of April 18, 2011, that entry stated:

How can I control who can see my status and posts?

You always have the option to change the privacy for individual posts before you share them. Look for the lock icon next to the Share button — it opens a menu of privacy settings that are available for your post. Select the group of people you want share your post with from the menu. If you choose Customize, you can name specific friends to share with or keep from seeing your post.

You can also set a default so your posts will automatically return to your preferred setting when you choose not to use the lock icon. To do this:

From your Account dropdown menu, choose Privacy Settings.

Under Sharing on Facebook, click "Customize settings."

Next to Posts by me, choose a default setting from the dropdown.

The April 25, 2011 version of the entry is the same as the version attached as

Exhibit D to my July 1, 2011 Declaration.

11. Exhibit E to my July 1, 2011 Declaration included the then-current version of the Facebook Help Center entry entitled, "How do I create Sponsored Stories?"

As of February 3, 2011, that entry stated:

How do I create Sponsored Stories?

If you'd like to create Sponsored Stories to promote your Page, Place or application, you can create them through the create flow. In the create flow you will be able to select the Page, Place or application that you'd like to promote, as well as the type of Sponsored Story you'd like to run.

The April 26, 2011 version of the entry is the same as the version attached as

1 Exhibit E to my July 1, 2011 Declaration.

2 12. Exhibit F to my July 1, 2011 Declaration included the then-current version of the  
3 Facebook Help Center entry entitled, "What does it mean to 'Like' a Page or content off of  
4 Facebook?". That version of the entry has remained the same since at least December 6, 2010.

5 13. Exhibit F to my July 1, 2011 Declaration also included the then-current version of  
6 the Facebook Help Center entry entitled, "How do I unlike something?". That version of the  
7 entry has remained the same since at least April 19, 2010.

8  
9 I declare under penalty of perjury that the foregoing is true and correct.

10 Executed on August 15, 2011 at Palo Alto, California.

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13 Ana Yang Muller

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